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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,104	01/20/2004	Sylvie Gauthier	6674-0038-1	4651
50811 7590 12/13/2007 O'SHEA, GETZ & KOSAKOWSKI, P.C. 1500 MAIN ST. SUITE 912 SPRINGFIELD, MA 01115			EXAMINER DICUS, TAMRA	
			ART UNIT 1794	PAPER NUMBER
			MAIL DATE 12/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/762,104

Applicant(s)

GAUTHIER ET AL.

Examiner

Tamra L. Dicus

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The claim objection and 102b is withdrawn due to Applicant's amendments. The 103 rejections are adjusted due to Applicant's amendments also.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-9 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of copending Application No. 10/762,103 in view

of Scher. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application contain the subject matter that is narrower in scope than that in the instant claims, rendering them obvious over each other. Further a difference between using phenolic or melamine based formaldehyde impregnates are taught by Scher at 5:15-25 to be suitable for using in paper or cellulosic based papers, thus choosing one over the other would have been an obvious choice for creating a decorative laminate.

This is a provisional obviousness-type double patenting rejection.

3. Claims 1-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No. 7,179,538 whether alone, or in view of Hiers et al. (US Pat. 4,132,821).

Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the patented claims is narrower than that of the instant claims, rendering them obvious over each other.

In regards to instant claims 1-9, the patent contains all the limitations in the instant claims, despite a wording of backing layer vs. substrate, they have the same meaning. However, the patented independent claims 1, 2, and 3 include the flexible backing layer in addition to the leather layer and the decorative layer of instant claim 1, and the backing is considered equivalent to the instant substrate. Thus, the scope of the instant claims embraces that of the patented claims, rendering them obvious over each other.

Claim Objections

4. Claims 1-9 are objected to because of the following informalities: the amended phrase “the leather decorative layer”, is not consistent with the “decorative layer consisting essentially of a leather material”. It is not clear if the decorative layer is completely of leather or just a percentage of leather. The same language is suggested for all terms for consistency. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner believes that independent claims and 6 (amended) do not have the proper support in the original specification as filed because the specification does not provide any teaching or discussion on a thermosetting resin migrated from a underlayer or its usage with Applicant's claimed consolidated laminate. There is a resin impregnated in Applicant's page 3, [0013], but no movement of the resin is mentioned.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,440,538 to Ungar in view of US 1,672,537 to Novak.

7. Ungar teaches an abrasion resistant laminate wherein a wear resistant upper layer is made under high pressure and temperature (4:35-45), the first wear layer 6 (shown in Fig. 2, laminated and apart of 12 of Fig. 3) may be made according to Lane or Mehta (6:23-35) using impregnated paper (5:35-40) or produce a melamine (resin) saturated paper (embraces impregnated) (6:35-40) or produce a melamine impregnated alpha cellulose or paper sheet (6:45-50). Further the decorative layer 7 under wear layer 6 is also impregnated with melamine resin (6:60-68) as is the core layer 8 (all layers 6, 7, and 8 represent an overlayer, underlayer, substrate, and backer as claimed). Both layers 7 and 8 are also of paper (embraces cellulose, see 7:1-45). At least four impregnated paper layers are used (see also Fig. 6, layers 8A-8D illustrating four for the core and where a total of six possible impregnated paper layers are employed—equating to instant claim 6 use of first and second decorative and underlayers) and the wear layer is decorative (see Abstract). See also the additional functionality of layer 6 also being an overlay to protect the decorative layer 7 (6:47-55). Claims 1, 3, 5 are addressed.

8. Ungar does not teach a decorative layer consisting essential of a leather material.
9. Novak teaches a floor covering built up of plys of leather shavings as the surface coat (2:55-75) and put on a paper machine for mixing fibers with the leather during the paper making operation and sheeted under application of heat and pressure into a tough flooring material (2:70-101) for exhibiting superior wearing surface having higher resistance to abrasion (1:40-68). Such description is equivalent to a decorative layer consisting essential of a leather material.
10. It would have been obvious to one having ordinary skill in the art to have modified the printed paper wear layer of Ungar to use, incorporate, or substitute an improved paper leather material as Novak taught it produces superior results such as tough flooring material, wearing and higher resistance to abrasion. Because Ungar was also concerned with abrasion resistance (see the title), it would have been expected that the incorporation of leather material for the reasons Novak taught successfully envisages the instant invention.

Regarding the thickness recitation per instant claim 2 the combination does not teach. However, it is submitted the optimal and/or claimed values of the respective material would have been obvious to the skilled artisan at the time the invention is made since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. *In re boesch*, 617 F.2d 272,205 USPQ 215(CCPA 1980). Thickness effects durability and strength.

The references above do not teach a migrated resin from the underlyer, however, since thermosetting resins are impregnated in the same fashion and in the same order, this transition is expected (claim 1).

11. Claims 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,440,538 to Ungar in view of US 1,672,537 to Novak and further in view of Nelson (US 6324809).
12. Ungar and Novak are applied above.
13. Ungar and Novak do not teach a substrate of plywood or particle board or medium density per instant claim 4 .
14. Nelson teaches a similar laminate flooring having a decorative surface of conventional high pressure decorative laminate made from melamine formaldehyde impregnated paper attached to a core via adhesives, wherein the core is of wood based products such as high density fiberboard, polyvinyl chloride (equivalent core material to that used by Ungar), and veneers (embraces plywood) at 3:1-50. See also 5:30-35 and Abstract.
15. It would have been obvious to one having ordinary skill in the art to have modified the combination to substitute, use, or incorporate plywood, particle board, or fiber board because Nelson teaches said wood based materials are equivalent to polyvinyl chloride used as cores for decorative melamine impregnated paper surface layers in laminate flooring as cited above.
16. Claims 1-3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scher (US 3,700,537) in view of Schlup et al. (US 5,811,122) or alternatively in view of Schmooch (US 5,344,692) or alternatively in view of Hiers et al. (US 4,132,821).

Scher teaches in this order: overlay 20, Fig. 3A and associated text (overlayer), embedment sheet 18, Fig. 3A and associated text (function as decorative layer), print sheet 16, Fig. 3A and

associated text (one or more cellulosic sheet impregnated with melamine-formaldehyde resin, functioning as underlay layer), core sheet 14 (top layers), Fig. 3A and associated text (one or more cellulosic sheet impregnated with melamine-formaldehyde resin, function as substrate), core layer 14, (bottom ones) (cellulosic impregnated with the same aforementioned resin - backer layer), and plate 12, Fig. 3A and associated text (second decorative layer of any dimensionally stable material).

Claims 1-3, and 5 are addressed.

Scher does not expressly disclose said layers are of a leather material nor a bonded leather (instant claim 1-2), while using it in a laminated composite simulating leather.

However, Scher teaches embedment layer being of almost of any construction (5:35-38), so long as it doesn't melt during lamination (5:50-55).

Schlup teaches a similar leather/polymer composite material used in structural composite (4:39-40) materials to improve hide/leather properties with impregnated polymer systems, such composite material improves several properties surrounding those effected by heat and pressure, namely toughness, machinability, elasticity, compressibility and sealing where Schlup teaches the necessity of such an improvement in the hide and leather industries and laminated composites. See 1:10-20, 2:30-65, patented claims 1-15, Example 2, and Tables 1-2. Such description of this material is considered equivalent to Applicant's claimed leather or bonded leather materials. Schlup also teaches pressure and heat applications of up to 160 degrees C and 3.8 psig in a hot press (4:15-18, 8:7-25, Tables 1-2 show all properties of using hide/leather alone and with a polymer). Such heat and pressure teachings in conjunction with teachings of use in structural composites serve to produce a similar heat and pressure consolidated laminate like that of Scher.

Schmoock teaches a leather-containing composite material used in structural composite materials in application of heat and/or pressure as a low-cost alternative (Abstract, 3:1-40). Such

description of this material is considered equivalent to Applicant's claimed leather or bonded leather materials.

Hiers discloses the use of leather containing animal hides (see 1:6-9) for the hand and feel of natural leather (Abstract) in a non-woven composite (patented claims 1-2) (which is the same reason Applicant uses the leather material) under a hot press enduring heat and pressures of 225 to 500 degrees F and 5 to 500 lbs per sq. in. (see 12:20-30, Example 1, especially lines 45-50 of col. 13).

It would have been obvious to one having ordinary skill in the art to have modified the composite of Scher to use the leather composite material of Schlup for the purpose of improving several properties surrounding those effected by heat and pressure, namely toughness, machinability, compressibility and sealing where the such an improvement in laminated composites is needed in the hide and leather industries as taught by Schlup (1:10-20, 2:30-40, patented claims 1-15, Example 2, and Tables 1-2).

It would have been obvious to one having ordinary skill in the art to have modified the composite of Scher to use the leather composite material of Schmooch for the purpose of improving several properties surrounding those effected by heat and pressure where such an improvement in laminated composites is a low cost alternative to high-quality leathers as taught by Schmooch (3:1-45, Abstract).

It would have been obvious to one of ordinary skill in the art to have employed leather comprising animal hides as taught by Hiers in the woven or cloth embeddment layer of the laminate of Scher because leather containing animal hides as well as simulated leather have been conventionally used in the art of decorative articles for the hand and feel of natural leather in a non-woven heat and pressure composite, which is the same reason Applicant uses the leather material as cited above.

Regarding the thickness recitation per instant claim 2, Schlup does not teach. However, it is submitted the optimal and/or claimed values of the respective material would have been obvious to the skilled artisan at the time the invention is made since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. *In re boesch*, 617 F.2d 272,205 USPQ 215(CCPA 1980).

The references above do not teach a migrated resin from the underlyer, however, since thermosetting resins are impregnated in the same fashion, this transition is expected (claim 1).

17. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scher in view of Schlup et al. or alternatively in view of Schmooch (US 5,344,692) or alternatively in view of Hiers et al. (US 4,132,821).

Scher teaches in this order: overlay 20, Fig. 3A and associated text (overlayer), embedment sheet 18, Fig. 3A and associated text (function as decorative layer), print sheet 16, Fig. 3A and associated text (one or more cellulosic sheet impregnated with melamine-formaldehyde resin, functioning as underlay layer), core sheet 14 (top layers), Fig. 3A and associated text (one or more cellulosic sheet impregnated with melamine-formaldehyde resin, function as substrate), core layer 14, (bottom ones) (cellulosic impregnated with the same aforementioned resin - backer layer), and plate 12, Fig. 3A and associated text (second decorative layer of any dimensionally stable material). Claims 6 and 8 are addressed.

Scher teaches embeddment layer being of almost of any construction (5:35-38), so long as it doesn't melt during lamination (5:50-55).

Scher does not expressly disclose said layer is of a leather material nor a bonded leather (instant claim 6-7), while using it in a laminated composite simulating leather. Scher does not

expressly repeat the layers 20 and 18 to produce a second decorative and second underlayer, however, unless the reference teaches away from reproducing said layers, it is obvious to provide a second combination of decorative layer adjacent a second underlayer motivated by the desire of providing more stability or thickness to the overall structure, as Scher suggests any construction may be the embedment layer, it would have been obvious to be said second layers, especially since the embedment layer is surrounded by one or more cellulosic resin impregnated sheets. Additionally, the mere duplication of parts has no patentable significance unless a new and unexpected result is produced.

Schlup teaches a leather/polymer composite material used in structural composite materials to improve hide/leather properties with impregnated polymer systems, such composite material improves several properties surrounding those effected by heat and pressure, namely toughness, machinability, compressibility and sealing where Schlup teaches the necessity of such an improvement in the hide and leather industries and laminated composites. See 1:10-20, 2:30-40, patented claims 1-15, Example 2, and Tables 1-2. Such description of this material is considered equivalent to Applicant's claimed leather or bonded leather materials.

Schmoock teaches a leather-containing composite material used in structural composite materials in application of heat and/or pressure as a low-cost alternative (Abstract, 3:1-40). Such description of this material is considered equivalent to Applicant's claimed leather or bonded leather materials.

Hiers discloses the use of leather containing animal hides (see 1:6-9) for the hand and feel of natural leather (Abstract) in a non-woven composite (patented claims 1-2) (which is the same reason Applicant uses the leather material) under a hot press enduring heat and pressures of 225 to 500 degrees F and 5 to 500 lbs per sq. in. (see 12:20-30, Example 1, especially lines 45-50 of col. 13).

It would have been obvious to one having ordinary skill in the art to have modified the composite of Scher to use the leather composite material of Schlup for the purpose of improving several properties surrounding those effected by heat and pressure, namely toughness, machinability, compressibility and sealing where the such an improvement in laminated composites is needed in the hide and leather industries as taught by Schlup (1:10-20, 2:30-40, patented claims 1-15, Example 2, and Tables 1-2).

It would have been obvious to one having ordinary skill in the art to have modified the composite of Scher to use the leather composite material of Schmooch for the purpose of improving several properties surrounding those effected by heat and pressure where such an improvement in laminated composites is a low cost alternative to high-quality leathers as taught by Schmooch (3:1-45, Abstract).

It would have been obvious to one of ordinary skill in the art to have employed leather comprising animal hides as taught by Hiers in the woven or cloth embeddment layer of the laminate of Scher because leather containing animal hides as well as simulated leather have been conventionally used in the art of decorative articles for the hand and feel of natural leather in a non-woven heat and pressure composite, which is the same reason Applicant uses the leather material as cited above.

Regarding the thickness recitation per instant claim 7, Schlup does not teach. However, it is submitted the optimal and/or claimed values of the respective material would have been obvious to the skilled artisan at the time the invention is made since it has long being held that such discovery, such as an optimum value of the respective result effective variable involves only routine skill in the art. *In re böesch*, 617 F.2d 272,205 USPQ 215(CCPA 1980).

The references above do not teach a migrated resin from the underlyer, however, since thermosetting resins are impregnated in the same fashion, this transition is expected.

18. Claims 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scher in view of Schlup or Schmooch or Hiers et al., as applied to claims 1 and 6 above, and further in view of Takeuchi et al.

The combination is relied upon above.

The combination is silent to a substrate of materials listed in claims 4 and 9.

Takeuchi teaches a decorative composite where the substrate is of a variety of materials, including that of Scher, paper and cellulosic sheet materials, and also all those listed in claims 4 and 9 (5:10-61), thereby teaching equivalent materials used for the same supportive purpose as a substrate applied in composites.

It would have been obvious to one having ordinary skill in the art to have modified the composite of the combinations to use plywood, medium density fiberboard, or particleboard because Takeuchi teaches they are equivalents to cellulosic sheets used as a substrate for composites (Takeuchi, 5:10-61, 12, Abstract).

Response to Arguments

19. Applicant's arguments filed 09-11-07 have been fully considered but they are not persuasive.

Applicant's arguments address Scher being inexpensive to produce and would not be combined with an expensive leather material. The cost is not of issue because Scher relies on cost for the method of making the laminate (see 3:65-70), and not attributed to the materials. Further the

Examiner did not use a teaching to an expensive leather material. Scher teaches an embeddment layer being of almost of any construction (5:35-38) and thus this teaching is general and does not limit the embeddment layer, thus it is obvious to substitute said layer to be of a leather material especially since both Schlup and Scher teach similar heat and pressure leather composites, despite Applicant's allegations that Schlup does not teach a high pressure laminate (see the title "composites", Examples 1-3 detailing steps at high temperatures of 100-120 degrees C and pressures of 8.6 psig, and within col. 4, lines 15-18 any mechanism such as pressure types are employed for the hide/leather impregnate). Moreover, Applicant does not claim a "high" pressure laminate, but a heat and pressure laminate. Further Scher expressly states that the embeddment can be of any material so long as it doesn't melt (5:50-55) and because the secondary references teach the use of hot presses, the combinations are expected to successfully produce the instant laminate. Also, note that the claimed language does not exclude the simulated leather material. The Examiner is not relying on the cellulose paper layer anymore for the substitution but the embeddment layer for the substitution of leather because of the amendment.

Applicant further argues the combination does not provide for the same qualities as Applicant desires, however, the same materials are taught and would have all the inherent qualities that naturally flow from the same materials while not explicitly taught. Moreover, Schlup teaches other properties such as improved toughness, elasticity, and impact resistant qualities (2:45-450), those of which would have been desirable to Scher. The feel, smell, and touch of leather is also not claimed.

Applicant argues that because Scher teaches an inexpensive alternative and embossing it, that the reference teaches away from including leather. However, this argument is not persuasive for the

reasons set forth above. Further, cost is not of issue when Scher teaches the embedment layer can be of any stable material, of which the impregnated leather material of Schlup most definitely is, so adding it is obvious and is not a teaching away regardless of further decorative steps like embossing taught by Scher. Again, Scher doesn't teach inexpensive materials but a method. One would desire a leather decorative material as taught in any of the secondary references for all of the properties that a leather material inherently provides in the laminate of Scher to become more decorative and to further simulate the appearance of leather (see Scher 2:20-23, 2:45-52). Applicant's arguments to Schlup regarding full impregnation of hide/leather does not teach away from a leather material because the entire hide/leather polymer layer is considered a leather material. Also Schlup explains that the hide/leather polymer (HLP) has improvements that are needed in structural composite materials (2:35-40), such like the structural composite of Scher. Applicant argues what would not work in the combination; however Applicant has not provided any evidence to this point. The arguments of counsel cannot take the place of evidence in the record. In *re Schulze*, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results, commercial success, solution of a long-felt need, inoperability of the prior art, invention before the date of the reference, and allegations that the author(s) of the prior art derived the disclosed subject matter from the applicant. See MPEP 716.01(c).

Applicant also does not preclude an impregnated leather material, Applicant uses the limitations "leather material" and thus because Schlup teaches an equivalent hide/leather material, how he makes it (impregnating resins) is of no issue.

Applicant argues “There is no disclosure of the leather substrate being bonded to an underlay layer impregnated with a thermosetting resin, or suggestion that it may be consolidated in a high pressure laminate.”. This is not convincing because Schmooch teaches the laminate (composite) is formed in an anvil and ram in a press, which means it's under high pressure (see Abstract “bonded...to the application of heat and/or pressure”).

Applicant argues “The fact that Schmooch discloses a leather coating that may enable less expensive leather to be used, does not avoid the fact identified by Scher that a leather decorative layer is more expensive than a paper decorative layer printed to look like leather.”. Again, cost is not an issue. The same rationale applied above is applied to Schmooch. Moreover, see Schmooch teaching the objection of the invention is to provide a method for flexible laminates for use as or in lieu of high-quality leathers and laminates having any desirable characteristics at a low cost at col. 3, lines 29-46.

Applicant argues the combination including Takeuchi; however, Takeuchi is used for the same reasons as set forth prior.

Hiers is new prior art, also applied to teach a substitution for an embeddment woven/cloth layer for a nonwoven textile leather material for the hand and feel of natural leather in heat and pressure laminates as set forth above. Also see the new combination using Nelson, Ungar and Novak.

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tamra L. Dicus whose telephone number is 571-272-1519. The examiner can normally be reached on Monday-Friday, 7:00-4:30 p.m., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Tamra L. Dicus
Examiner
Art Unit 1794

November 16, 2007

Callie Shosko
Callie Shosko
Supervisory Patent Examiner